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IN THE UNITED STATES DISTRICT COURT

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9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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11 CHRISTINE ONDERSMA,

No. C-06-0258 MMC

12 Plaintiff,

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR ATTORNEY'S FEES,  
COSTS, AND PREJUDGMENT  
INTEREST; VACATING HEARING**

13 v.  
14 METROPOLITAN LIFE INSURANCE  
COMPANY, et al.,

15 Defendants

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19 Before the Court is plaintiff's Motion for Attorney's Fees, Costs and Prejudgment  
20 Interest, filed February 14, 2008. Defendants have filed opposition, to which plaintiff has  
21 replied. Having read and considered the papers filed in support of and in opposition to the  
22 motion, the Court finds the matter suitable for decision on the papers, VACATES the March  
23 28, 2008 hearing, and rules as follows:

24 1. For the reasons stated by plaintiff, and contrary to defendants' argument, the  
25 Court finds plaintiff is entitled to an award of attorney's fees. Although plaintiff has not  
26 made a sufficient showing that defendant denied plaintiff's claim in bad faith or that other  
27 plans would be deterred by such an award, the position taken by plaintiff was meritorious in  
28 that she obtained the relief she sought under the terms of the plan, defendant does not

1 dispute its ability to pay the requested award of fees and costs, and the instant action  
 2 established a ruling generally applicable to all plan participants, specifically, that the plan  
 3 does not include an unambiguous delegation of discretionary authority to the claims  
 4 administrator. See McElwaine v. U.S. West, Inc., 176 F. 3d 1167, 1172 (9th Cir. 1999)  
 5 (setting forth factors to be considered with respect to determination of whether award of  
 6 fees and costs is appropriate in ERISA action). Further, the Court finds no “special  
 7 circumstances” exist that “would render [an] award [of fees and costs] unjust.” See id.  
 8 (holding successful ERISA plaintiff ordinarily entitled to award of attorney’s fees and costs  
 9 in absence of “special circumstances”).

10       2. For the reasons stated by plaintiff, and contrary to defendants’ argument, the  
 11 Court finds the requested hourly rate of \$475 to be appropriate, given counsel’s experience  
 12 and the prevailing rates in the community for attorneys engaged in similar practice. (See  
 13 Roboostoff Decl. ¶¶ 2-7, 11, Exs. 2-4; Kalkin Decl. ¶¶ 2-8, 12, Ex. 1 ¶ 9; Coleman Decl.  
 14 ¶¶ 2-9.)

15       3. For the reasons stated by plaintiff, and contrary to defendants’ argument, the  
 16 Court finds the hours claimed, specifically, 163.45 hours, to be reasonable under the  
 17 circumstances presented, which circumstances include, but are not limited to, the need of  
 18 plaintiff’s counsel to analyze a voluminous administrative record, to respond to defendant’s  
 19 motion pertaining to the standard of review, to conduct both legal and medical research  
 20 with respect to fibromyalgia, and to prepare for the court-ordered mediation.<sup>1</sup> Accordingly,  
 21 plaintiff will be awarded fees in the amount of \$77,638.75 (\$475 x 163.45).

22       4. The Court finds plaintiff is entitled to costs in the amount of \$1367.31, the amount  
 23 both parties agree is recoverable. (See Defs.’ Opp. at 9:16-18.)<sup>2</sup>

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 25       <sup>1</sup>The reasonableness of the amount sought is further supported by plaintiff’s decision  
 26 not to seek compensation for certain additional work for which such compensation  
 27 reasonably could have sought, for example, the time expended in complying with the  
 28 Court’s order that the parties meet and confer as to the form of the judgment.

2       <sup>2</sup>Although plaintiff initially sought an award of costs in the amount of \$1939.28,  
 3 plaintiff, in her reply, has agreed to limit her request to the amount defendants concede is  
 4 recoverable. (See Pl.’s Reply at 8:14.)

1       5. For the reasons stated by plaintiff,<sup>3</sup> the Court finds an award of pre-judgment  
2 interest is appropriate, and that plaintiff is entitled to pre-judgment interest in the amount of  
3 \$21,350.01. (See Ondersma Decl., filed March 14, 2008, ¶¶ 2-4.)

## CONCLUSION

5 For the reasons stated above, plaintiff's motion for an award of attorney's fees,  
6 costs, and pre-judgment interest is hereby GRANTED, as follows:

7       1. Plaintiff is awarded attorneys' fees in the amount of \$77,638.75.  
8       2. Plaintiff is awarded costs in the amount of \$1367.31.  
9       3. Plaintiff is awarded pre-judgment interest in the amount of \$21,350.01.

10 || IT IS SO ORDERED.

12 | Dated: March 24, 2008

*Maxine M. Chesney*  
MAXINE M. CHESNEY  
United States District Judge

25       <sup>3</sup>Defendants have not pointed to, nor does the record reflect, any equitable or other  
26 consideration suggesting plaintiff should not be awarded pre-judgment interest. Cf. Shaw  
27 v. International Ass'n of Machinists and Aerospace Workers Pension Plan, 750 F. 2d 1458,  
28 1465 (9th Cir. 1985) (affirming decision declining to award pre-judgment interest to  
prevailing ERISA plaintiff where defendant established "additional financial strain that an  
award of pre-judgment interest would place on the [defendant] could injure other  
beneficiaries of its pension plan").